IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND SEVEN

PRESENT

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.3354 OF 2001

Between:

The Chamber of Commerce,
Sattenapalli, Guntur District,
Rep. By its President Chellam-
cherla Sambasiva Rao.

.... PETITIONER

AND

The Commissioner,
Sattenapally Municipality,
Sattenapally, Guntur District,
And another.

....RESPONDENTS

THE HON'BLE SRI JUSTICE
C.Y.SOMAYAJULU

WRIT PETITION NO.3354 OF 2001

O R D E R

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The grievance of the petitioner is that the first respondent Municipality by its resolutions viz., Resolution No.179, dated 30.12.2000 and Resolution No.226, dated 05.02.2001 without following the procedure prescribed had illegally and arbitrarily passed orders to collect licence fee from traders and also increased the licence fee and in violation of the provisions of the Schedule-IV of the A.P. Municipalities Act (for short 'the Act').

There is no representation on behalf of the first respondent, though time is granted from 10.09.2007 to 13.09.2007 and from 13.09.2007 to this day. No counter is filed by the respondents, though the writ petition is filed as long back as in 2001. The Assistant Government Pleader representing second respondent is present and says that he is a formal party and the writ petition has to be answered by the first respondent.

The contention of the learned counsel for the petitioner is that since the first respondent Municipality by the impugned resolutions is collecting licence fee from the traders in respect of the trades, which are not covered by Schedule-IV of the Act, the same is liable to be set

aside. He relied on ***FERTILIZERS, PESTICIDES AND SEEDS DEALERS WELFARE ASSOCIATION, SURYAPET V/s. MUNICIPAL COUNCIL, SURYAPET MUNICIPALITY***[1], where a learned Judge held that Section 328 of the Act empowers the Government to alter, add or cancel Schedules-I to IV of the Act. Sub-section (2) thereof further requires the Government to introduce the notification altering the schedules before the Legislative Assembly following the date of issue of notification, and so, amending Schedule IV is a legislative function, which cannot be usurped by the Municipal Council or the Municipal Commissioner and hence in respect of any item of business or category of business, which are not specifically found in Entries (a) to (v) of Schedule IV, Municipal Council cannot impose trade licence fee unless and until proper procedure is followed under Section 328 of the Act. It is his contention that for enhancement of the fee also the procedure prescribed in the Act has to be followed and since no such procedure is followed, the impugned resolutions are liable to be set aside.

In view of the ratio in ***FERTILIZERS, PESTICIDES AND SEEDS DEALERS WELFARE ASSOCIATION***'s case relied on by the learned counsel for the petitioner, it is clear that unless and until the Government amends Schedule-IV, the Municipal Council has no power to collect fees from the trades which are not covered by Schedule-IV. So, the action of Municipality and the respondent in trying to collect tax from the trades, which are not covered by Schedule-IV, is liable to be set aside. But, I am unable to agree with the contention of the learned counsel for the petitioner that the enhancement is liable to be set aside inasmuch as the respondent did not follow the procedure prescribed by Section 81 of the Act, because Section 81 of the Act relates to levy of a property tax, tax on carriages and carts and a tax on animals. This is not a case of enhancement of tax, but is a case of enhancement of licence fees and levy of fees is

governed by Section 277 of the Act. Fees is collected for rendering services and there is an element of quis pro quo. So, depending on the expenditure for the services to be provided, the Municipality has a right to or enhance the fees. No material is produced to show that the enhancement of the licence fee is arbitrary or disproportionate to the services being rendered by the Municipality. So, I do not wish to interfere with the enhancement of the fees.

Therefore, the writ petition is partly allowed and the resolution for collection of fees in respect of trades which are not covered by Schedule IV of the Act is set aide and in respect of other relief prayed, the writ petition stands dismissed. Parties are directed to bear their own costs.

JUSTICE C.Y.SOMAYAJULU

14th SEPTEMBER, 2007
PGS

THE HONOURABLE SRI JUSTICE
C.Y.SOMAYAJULU

W.P.NO.3354 OF 2001

14th SEPTEMBER, 2007

[1] 2006(1) ALD 574